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Testimony to the Subcommittee on Human Resources, Committee on Ways and Means, House of Representatives in support of the proposed Protect Our Kids Act

Acting Chairman Paulsen, Chairman Camp, Ranking Member Doggett, and Members of the Subcommittee:

We at the Children's Advocacy Institute are grateful for the opportunity to address the important issue of child abuse fatalities and near fatalities in the U.S. and the potential of the Protect Our Kids Act to help remedy this tragic epidemic. We support the adoption of this important legislation and hope that you will consider our recommendations as to how it may fulfill its potential once enacted.

Our Credentials

We have been working on issues pertaining to child abuse or neglect fatalities and near fatalities for a number of years and are recognized as one of the leading advocacy organizations in this space. The focus of our interest on this issue is on enhancing the public disclosure and transparency of these tragic incidents and using improved reporting and disclosure as a means to prevent future fatalities and near fatalities. CAI believes that states must be held accountable to the public regarding what led up to each child abuse or neglect deaths and near-death so that the public can identify and remedy systemic shortcomings.

In order to be eligible to receive federal Child Abuse Prevention and Treatment Act (CAPTA) funds, states must have provisions that "allow for public disclosure of the findings or information about...case[s] of child abuse or neglect [that have] resulted in a child fatality or near fatality."¹ Together with First Star, CAI has gathered and analyzed the provisions that have been adopted by states in furtherance of this mandate and published two reports on the subject, entitled "*State Secrecy and Child Deaths in the U.S.—An Evaluation of CAPTA-Mandated Public Disclosure Policies about Child Abuse and Neglect Fatalities or Near Fatalities, with State Rankings.*"² The reports give each state a grade (A to F) based on the quality of the state's CAPTA-mandated public disclosure policy.

Our first report, published in 2008, found that a majority of U.S. states had adopted policies that did not provide adequate public access to information about fatal and life-threatening child abuse cases. The findings of our initial report generated substantial public attention and were key in prompting positive change with regard to child maltreatment laws and policies in several states.

¹ 42 U.S.C. 5106a(b)(2)(A)(x).

² The two reports, published in 2008 and 2012, are available online at www.cachildlaw.org/Misc/State_Secrecy_Final_Report_Apr24.pdf and www.cachildlaw.org/Misc/StateSecrecy2ndEd.pdf.

The Second Edition, released in 2012, provided an updated analysis of states' public disclosure laws and policies. Since the 2008 report, we found that 11 states improved their laws significantly, while a few others had actually reduced transparency—and several states kept the same low grades they had received in 2008.

CAPTA acknowledges the importance of public disclosure in order to identify and fix systemic problems that may unnecessarily lead to child deaths or near-deaths. Unfortunately, CAI and First Star have found that policies at the state level vary widely, and many states still have policies that fail to fulfill CAPTA's intent. Even in states where disclosure has been deemed an important goal, the requirement is often not adequately reflected in state laws or written policies and thus is not enforceable, or can be quickly undone by a change in administrations.

Because enforceability is the key concept to address in evaluating a state's policy regarding public disclosure of this information, a major goal of our *State Secrecy* report has been to encourage more states to formalize their policies in statutes or to issue binding regulations.

States must be held accountable and comply with existing law. But we have learned that they will not do so voluntarily. Until the federal government enforces its own laws mandating that each state releases accurate and thorough information in a timely manner, we will be hindered in our ability to identify and repair the fault lines in our child protective system or reduce the horrifying rate of child fatalities in this country.

Recommendation that the Commission Work to Strengthen Current Federal Law Governing Disclosure and Reporting of Child Abuse and Neglect Fatalities and Near Fatalities

We would recommend that one primary focus of the Commission to End Child Abuse Fatalities and Near Fatalities be to follow-up with the unfulfilled mandate from the 2010 reauthorization of CAPTA.

The primary federal law governing the public disclosure of information pertaining to child abuse fatalities and near fatalities is the Child Abuse Prevention and Treatment Act. In 2008, after the release of the 2008 edition of our report, we, along with advocacy groups including the entire National Child Abuse Coalition petitioned Congress to clarify and strengthen the reporting requirements imposed on the states by CAPTA.

Under current law, many States currently fail to re-shift the balance between confidentiality and public disclosure when a child dies or nearly dies from maltreatment. Many States' narrow reading of CAPTA frustrates the statute's purpose. And to be fair, in its current form, CAPTA's public disclosure mandate is unduly vague. We would be happy to work closely with the Commission toward identifying CAPTA amendments that would help bring State policies in line and result in more predictable, consistent, and enforceable disclosure of this critical information.

Recommendation that the Commission Hold DHHS Accountable for Implementing Regulations to Strengthen and Clarify Disclosure Requirements of CAPTA as Instructed in HELP Committee Report

Due primarily to procedural and not substantive hurdles, various proposed amendments to CAPTA were not adopted in 2010. However, the Senate HELP committee report did take an unequivocal position directing HHS to implement existing CAPTA law requiring child protective services “to provide for the mandatory public disclosure of information about a case of child abuse or neglect which has resulted in a child fatality or near fatality” in order to ensure “improved accountability of protective services and drive appropriate and effective systemic reform.”³ Recognizing that not all states are in compliance with the CAPTA requirements, the committee adopted report language calling upon HHS to develop clear guidelines **in the form of regulations** clarifying for and instructing States of their responsibilities under CAPTA.

See the Committee report at: <http://www.gpo.gov/fdsys/pkg/CRPT-111srpt378/pdf/CRPT-111srpt378.pdf>

The text of the relevant section reads:

DISCLOSURE OF INFORMATION ON CHILD FATALITIES AND NEAR FATALITIES

The committee believes that the duty of child protective services, required in CAPTA Sec. 106(b)(2)(x), to provide for the mandatory public disclosure of information about a case of child abuse or neglect which has resulted in a child fatality or near fatality ensures improved accountability of protective services and can drive appropriate and effective systemic reform. However, the committee is aware that not all States are in compliance with these CAPTA requirements. The committee calls upon the Secretary of Health and Human Services to develop clear guidelines in the form of regulations instructing the States of the responsibilities under CAPTA to release public information in cases of child maltreatment fatalities and near fatalities, and to provide technical assistance to States in developing the appropriate procedures for full disclosure of information and findings in these cases.

In September 2012, ACF did, in fact, finally respond to the Senate HELP Committee’s directions, but it did not do what was requested of it. First, it issued program instructions rather than regulations. The distinction between the two is meaningful. Regulations are binding. Anything less is not. The intent of the Committee was also not respected. The HELP Committee called for regulations that would provide *greater* transparency, *better* information, and *more effective* public disclosure. What was released accomplishes the opposite. The cause of ensuring faithful compliance with CAPTA and, more importantly, accomplishes the desired goal of preventing further fatalities, requires rules that have the dignity and binding impact of regulations.

We respectfully request that the Commission put pressure on ACF to adhere to Congressional direction with respect to issuing these regulations.

Furthermore, we call upon the Commission to consider most carefully how to strengthen federal law as it pertains to disclosure, confidentiality, and reporting on this issue.

CAPTA needs to be amended to express stronger and clearer language that states cannot ignore.

DHHS must be held accountable for enforcing this law most stringently and should reprimand and penalize states that are out of compliance with these provisions.

Further legislative reform may also be required to obtain the data we need to track trends, identify fault lines across state systems, and implement meaningful reform that can save children's lives and reduce the alarming epidemic of fatalities. Those are our fervent aspirations for this Commission.

Thank you very much for your consideration.

Sincerely,

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The Children's Advocacy Institute was founded in 1989 as part of the Center for Public Interest Law at the University of San Diego (USD) School of Law. CAI's mission is to improve the health, safety, development, and well-being of children. CAI advocates in the legislature to make the law, in the courts to interpret the law, before administrative agencies to implement the law, and before the public to promote the status of children in our society. CAI strives to educate policymakers about the needs of children—about their needs for economic security, adequate nutrition, health care, education, quality child care, and protection from abuse, neglect, and injury. CAI's goal is to ensure that children's interests are represented effectively whenever and wherever government makes policy and budget decisions that will impact them.